



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2006 REGULAR SESSION

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SENATE BILL NO. 107

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WEDNESDAY, FEBRUARY 22, 2006

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The following bill was reported to the House from the Senate and ordered to be printed.

RECEIVED AND FILED  
DATE March 28, 2006  
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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adler

AN ACT relating to viatical settlement brokers.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

1 Section 1. KRS 304.15-700 is amended to read as follows:

2 (1) No person may act as a viatical settlement provider without first having obtained a  
3 license as a viatical settlement provider from the executive director.

4 (2) Except as provided in paragraph (b) or (c) of this subsection, no person may broker,  
5 solicit, or negotiate viatical settlement contracts between a viator and one (1) or  
6 more viatical settlement providers or otherwise act on behalf of a viator without  
7 first having obtained a license as a viatical settlement broker from the executive  
8 director as follows:

9 (a) All applicants for a viatical settlement broker license shall attend the required  
10 viatical broker training and pass a viatical broker examination designated by  
11 the executive director through administrative regulation.~~[,]~~

12 (b) A person licensed as a resident or nonresident insurance agent with a life line  
13 of authority, as set forth in KRS 304.9-030(2)(a), **shall be deemed to meet the**  
14 **licensing requirements of a viatical settlement broker and shall be permitted**  
15 **to operate as a viatical settlement broker without**~~[may act on behalf of a~~  
16 ~~viator or otherwise negotiate, as defined in KRS 304.9-020, viatical settlement~~  
17 ~~contracts between a viator and one or more viatical settlement providers~~  
18 ~~without first]~~ obtaining a license as a viatical settlement broker~~[and shall be~~  
19 ~~permitted to operate as a viatical settlement broker]~~ as set forth in this subtitle  
20 if:

- 21 1. That person has been licensed as a resident insurance agent with a life
- 22 line of authority in his home state for at least one (1) year;
- 23 2. Not later than thirty (30) days from the first day of operating as a viatical
- 24 settlement broker, the agent notifies the executive director, on a
- 25 **notification** form~~[or in a manner that may be]~~ prescribed by the

1 executive director, that he is acting as a viatical settlement broker and  
 2 pays any applicable fees to be determined by the executive director. The  
 3 notification shall include an acknowledgment by the agent that he will  
 4 operate as a viatical settlement broker in accordance with this subtitle;  
 5 and

6 3. Irrespective of the manner in which a viatical settlement broker or life  
 7 insurance agent is compensated, the viatical settlement broker or life  
 8 insurance agent is deemed to represent only the viator and owes a  
 9 fiduciary duty to the viator to act according to the viator's instructions  
 10 and in the best interests of the viator.

11 (c) Notwithstanding subsection (2) of this section, a person licensed as an  
 12 attorney, certified public accountant, or financial planner accredited by a  
 13 nationally recognized accreditation agency, who is retained to represent the  
 14 viator, whose compensation is not paid directly or indirectly by the viatical  
 15 settlement provider, may negotiate viatical settlement contracts without  
 16 having to obtain a license as a viatical settlement broker.

17 (d) A life insurance agent operating as a viatical settlement broker in  
 18 accordance with paragraph (b) of this subsection, prior to the execution of  
 19 the viatical settlement contract by all the parties for which such agent is  
 20 operating as a viatical settlement broker, shall have in force and file with  
 21 the executive director evidence of financial responsibility as follows:

22 1. A policy of insurance covering the legal liability of the agent as the  
 23 result of erroneous acts or failure to act in his or her capacity as a  
 24 viatical settlement broker, and inuring to the benefit of any aggrieved  
 25 party as the result of any single occurrence in the sum of not less than  
 26 twenty thousand dollars (\$20,000) and one hundred thousand dollars  
 27 (\$100,000) in the aggregate for all occurrences within one (1) year; or

1           2. An agreement with a licensed viatical settlement provider whereby the  
 2           agent is an additional insured on the policy of insurance covering the  
 3           legal liability of both the viatical settlement provider and the agent as  
 4           the result of erroneous acts or failure to act in his or her capacity as a  
 5           viatical settlement broker on a viatical settlement contract to which the  
 6           viatical settlement provider is a party, in the sum of twenty thousand  
 7           dollars (\$20,000) for any single occurrence; or

8           3. A deposit with the executive director of cash or a cash surety bond,  
 9           executed by an insurer authorized to write business in this  
 10           Commonwealth, in the sum of twenty thousand dollars (\$20,000),  
 11           which shall be subject to lawful levy of execution by any party to  
 12           whom the agent has been found to be legally liable as the result of  
 13           erroneous acts or failure to act in his or her capacity as a viatical  
 14           settlement broker.

15       (3) Application for a viatical settlement provider license or a viatical settlement broker  
 16       license shall be made in accordance with KRS 304.9-150.

17       (4) Licenses for viatical settlement providers and viatical settlement brokers shall be in  
 18       accordance with Subtitle 9 of KRS Chapter 304. A business entity licensed as a  
 19       viatical settlement broker or viatical settlement provider shall designate individuals  
 20       to act under its license in accordance with KRS 304.9-133.

21       (5) Prior to issuance of a license as a viatical settlement broker or viatical settlement  
 22       provider, except as provided in subsection (2)(d) of this section, the applicant shall  
 23       file with the executive director, and thereafter for as long as the license remains in  
 24       effect shall keep in force, evidence of financial responsibility in the sum of not less  
 25       than ~~twenty~~~~[five hundred]~~ thousand dollars (\$20,000)~~[\$500,000]~~ per occurrence,  
 26       and the sum of one~~[million five]~~ hundred thousand dollars  
 27       (\$100,000)~~[\$1,500,000]~~ in the aggregate, for all occurrences within one (1) year.

1 This evidence shall be in the form of an errors and omissions insurance policy  
2 issued by an authorized insurer, a bond issued by an authorized corporate surety, a  
3 deposit, or any combination of these evidences of financial responsibility. The  
4 policy, bond, deposit, or combination thereof shall not be terminated without thirty  
5 (30) days' prior written notice to the licensee and the executive director. *This*  
6 *subsection shall not apply to a life insurance agent operating as a viatical*  
7 *settlement broker in accordance with subsection (2) of this section.*

8 (6) No person shall use a viatical settlement contract form or provide to a viator a  
9 disclosure statement form in this Commonwealth unless it has been filed with and  
10 approved by the executive director in the following manner:

11 (a) At the expiration of sixty (60) days from the date the filing is complete, the  
12 form filed shall be deemed approved unless the executive director has by  
13 order given prior approval or disapproval. Approval of a form by the  
14 executive director shall constitute a waiver of any unexpired portion of the  
15 waiting period. The executive director may extend by not more than thirty  
16 (30) days the time period in which he or she may approve or disapprove the  
17 form. The executive director shall give notice to the licensee of the extension  
18 before expiration of the initial sixty (60) day period. At the expiration of the  
19 extended period, and in the absence of the prior approval or disapproval, the  
20 form shall be deemed approved. The executive director may at any time, after  
21 notice and for cause shown, withdraw any approval. The executive director  
22 shall disapprove a viatical settlement contract form or disclosure statement  
23 form if, in the determination of the executive director, the contract or  
24 provisions contained therein are unreasonable, contrary to the interests of the  
25 public, or otherwise are misleading or unfair to the viator. Upon notice and  
26 hearing the executive director shall withdraw approval of any contract later  
27 determined to be unreasonable, misleading, unfair, or contrary to the interest

1 of the public; and

2 (b) Forms may be submitted simultaneously with an application or at any time  
3 during the process of approving an application for a license pursuant to this  
4 subtitle or at any other time.

5 (7) A licensed viatical settlement provider shall not use any person to perform the  
6 functions of a viatical settlement broker as defined in KRS 304.15-020 unless the  
7 person holds a current and valid license or is a licensed insurance agent authorized  
8 pursuant to this subtitle to operate as a viatical settlement broker. A licensed viatical  
9 settlement broker shall not use any person to perform the functions of a viatical  
10 settlement provider as defined in KRS 304.15-020 unless the person holds a current  
11 and valid license as a viatical settlement provider.


12 (8) If any employee of a licensee violates any provision of KRS 304.15-020, 304.15-  
13 700 to 304.15-720, 304.42-190, and 304.99-126, the office may take disciplinary  
14 action against the employer licensee.

15 (9) When a viatical settlement provider elects to use a related provider trust in  
16 accordance with KRS 304.15-716, the viatical settlement provider shall file notice  
17 of its intention to use that trust with the office with a copy of the trust agreement.  
18 Any change in the trust agreement shall be filed with the executive director prior to  
19 its effect.

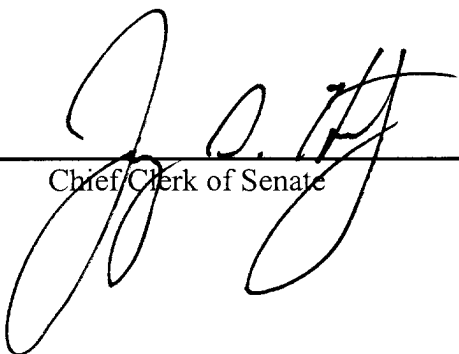
20 (10) Any additional death benefit payment on a life insurance policy that is the subject of  
21 a viatical settlement contract with a double or additional indemnity for accidental  
22 death shall be payable to the following:

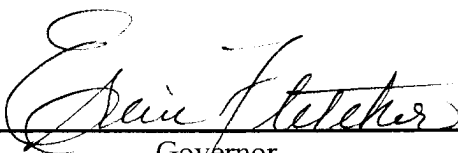
23 (a) The beneficiary last named by the policy owner prior to entering into the  
24 viatical settlement contract; or

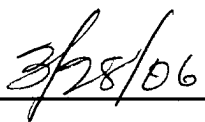
25 (b) To the estate of the viator in the absence of a beneficiary.

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker House of Representatives

Attest:   
\_\_\_\_\_  
Chief Clerk of Senate

Approved   
\_\_\_\_\_  
Governor

Date   
\_\_\_\_\_